

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA – FORT MYERS DIVISION**

**CASE NO. 9:18-bk-01169-FMD
CHAPTER 7**

IN RE:

**OSVALDO SANTA MARIA AKA
OSVALDO SANTA MARIA
PADRON AKA OSVALDO
SANTA-MARIA and YUNIA
SANTA MARIA AKA YUNIA
SANTA-MARIA,**

Debtors

**DEUTSCHE BANK NATIONAL TRUST'S RESPONSE TO
TRUSTEE'S OBJECTION TO PROOF OF CLAIM NO. 5-1 (DE-27)**

COMES NOW, Deutsche Bank National Trust Company, as certificate trustee on behalf of Bosco Credit II Trust Series 2010-1 (hereinafter "Creditor"), by and through its undersigned attorney, as and for its *Response to the Trustee's Objection to Claim No. 5-1* (Doc. No. 27), states as follows:

1. The Debtors filed a voluntary petition pursuant to Chapter 13 of the Bankruptcy Code on February 16, 2018..
2. Creditor timely filed its unsecured Proof of Claim No. 5-1 in the amount of \$92,402.06 on September 25, 2018 (the "Claim").
3. The Claim arises out of debt connected with a promissory note executed by Debtor, Osvaldo Santa Maria, on or around September 22, 2005 (the "Note"). In conjunction with the note, the Debtor executed a mortgage and granted Creditor a junior lien on the real property located 1702 North Dewitt Avenue, Lehigh Acres, Florida 33971 (the "Property"). The Note is attached an exhibit to the Claim.

4. On March 18, 2019, the Trustee filed an *Objection to Claim No. 5-1* (Docket No.27) asserting that: (1) the Claim did not provide sufficient information and/or documentation to determine the basis or the appropriate amount of the claim or whether the claim is barred by the statute of limitations or includes post-petition charges (the "Objection"). The Objection seeks to strike and disallow the Claim.

5. Creditor opposes the relief being sought by the Objection and asserts that the Claim is valid as filed.

Statute of Limitations

6. The Claim is not barred by the Statute of Limitations.

7. Under Florida law, when a creditor exercises its right to accelerate the amount due and owing under a note, the statute of limitations begins to run for the creditor to enforce the note. See *Greene v. Bursey*, 733 So. 2d 1111, 1114-15 (Fla. 4th DCA 1999) ("Where the installment contract contains an optional acceleration clause, the statute of limitations may commence running earlier on payments not yet due if the holder exercises his [or her] right to accelerate the total debt because of a default.").

8. In the instant case, the Note executed by the Debtor, which provides the basis for Creditor's claim, did not mature until October 1, 2020 and Creditor did not otherwise accelerate the loan until May 24, 2017 when its Complaint to enforce the terms of the promissory note was filed in the Circuit Court of the Twentieth Judicial Circuit, in and for Collier County, Florida. **See Exhibit A attached hereto.**

9. Creditor is therefore within the applicable Statute of Limitations to enforce the Claim.

Fees/Costs

10. Creditor is in the process of amending the Claim to show the dates of the claimed fees and costs in the amount of \$2,963.15.

11. Creditor serves the right to supplement this Response at any time at or prior to the hearing on the Objection.

WHEREFORE, Creditor respectfully requests that Trustee's Objection to its Proof of Claim be overruled and that the Court grant such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

Kahane & Associates, P.A.
8201 Peters Road, Suite 3000
Plantation, Florida 33324
Telephone: (954) 382-3486
Telefacsimile: (954) 382-5380

By: 

- ☐ Mare G. Granger, Esq., Fla. Bar No.: 146870
☐ Gregg S. Ahrens, Esq., Fla. Bar No.: 352837
☒ Taji Foreman, Esq., Fla. Bar No.: 58606

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was served electronically by CM/ECF or by U.S. Mail, first-class postage pre-paid to all parties on the attached Mailing List this 4th day of April, 2019.

Kahane & Associates, P.A.
8201 Peters Road, Suite 3000
Plantation, Florida 33324
Telephone: (954) 382-3486
Telefacsimile: (954) 382-5380

By: _____

- ☐ Marc G. Granger, Esq., Fla. Bar No.: 146870
☐ Gregg S. Ahrens, Esq., Fla. Bar No.: 352837
☒ Taj Foreman, Esq., Fla. Bar No.: 58606

Mailing List

Osvaldo Santa Maria
2400 55Th St Sw
Naples, Florida 34116

Robert Sanchez, P.A.
Attorney for Debtor(s)
355 W 49 St
Hialeah Florida 33012

Yunia Santa Maria
2400 55Th Street Sw
Naples, Florida 34116

Robert E. Tardif, Trustee
P.O. Box 2140
Fort Myers, Florida 33902-

US Trustee
United States Trustee - FTM7/13
Timberlake Annex
Suite 1200
501 East Polk Street
Tampa, Florida 33602